

Federal Communications Commission

DA 99-2841

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket 98-158
Table of Allotments,) RM-9342
FM Broadcast Stations.)
(Grants and Peralta, New Mexico))

DISPATCHED BY
DEC 22 11 21 AM '99
FCC MAIL SECTION

REPORT AND ORDER**Adopted: December 8, 1999****Released: December 17, 1999**

By the Chief, Allocations Branch:

1. At the request of Educational Media Foundation ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 13 FCC Rcd 17733 (1998), proposing the substitution of Channel 288C1 for Channel 288C at Grants, New Mexico, the reallocation of Channel 288C1 to Peralta, New Mexico, as the community's first local aural service, the modification of Station KQLV's construction permit to specify Peralta as its community of license and the allotment of Channel 244C3 to Grants as its fourth local FM service. Comments were filed by the petitioner and by the Regents of the University of New Mexico ("UNM"). Reply comments were filed by the petitioner.

2. As stated in the Notice, petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Modification of License R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Modification of License MO&O"), 5 FCC Rcd 7094 (1990). We recognized that neither Grants nor Peralta are located within an Urbanized Area. However, because a Peralta station operating on Channel 288C1 would place a city-grade 70 dBu signal over more than 50% of the Albuquerque Urbanized Area, petitioner was requested to provide a showing that Peralta warrants a first local service preference.¹ The petitioner was also requested to provide further information concerning the loss and gain areas, and the populations within those areas, which would be created if Station KQLV relocates to Peralta.

3. In response, petitioner reiterates that adoption of the proposal would result in a preferential arrangement of allotments since it would provide Peralta with its first local aural service without depriving Grants of its sole local aural service. It also restates that the change of community could enable the station to provide service at an earlier date since it would not be required to seek the redesignation of its present site from a low to high power usage by the Forest Service, a process which it states would take a minimum of two years. Because Station KQLV is unbuilt, petitioner states that the public will not lose a service that they had come to rely on, thus not raising the same concerns as that of an operating station, citing Sanibel and San Carlos Park, Florida, 10 FCC Rcd 7215 (MMB 1995), Pawley's Island and Atlantic Beach, South Carolina, 8 FCC Rcd 8657 (MMB 1993), and Glencoe and Le Sueur, Minnesota, 7 FCC Rcd 7651 (MMB

¹ See, also, Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951); RKO General (KFRC), 5 FCC Rcd 3222 (1990); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), and Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

1992). Further, if Channel 288 is reallocated to Peralta, petitioner states that the station would increase the net population which it serves by more than 370,000 people, within an 8,403 square kilometer area. While 25,449 people, within a 12,019 square kilometer area, will lose service, petitioner submits that 70.4% will continue to receive service from at least five other aural services. If Channel 244C3 is allotted to Grants, petitioner states that almost 87% of the loss area would be encompassed by at least five aural services. Therefore, it points out, the majority of the loss area will continue to be well served after the reallocation, citing Garberville and Hydesville, California, 9 FCC Rcd 3125, 3125-26, n. 5 (MMB 1994).

4. Petitioner states that Peralta is located 20 miles from the outskirts of Albuquerque and has a population of 3,182 people while Albuquerque's population is 384,736 people. To show the independence of Peralta from the Albuquerque Urbanized Area, petitioner reiterates that the community is listed in the 1990 U.S. Census as a Census Designated Place and has its own post office, zip code, volunteer fire department, a school, Peralta Elementary School, and a church, Peralta Memorial United Methodist. In addition, it states that the community, given its size, has a number of retail businesses, such as Peralta Power Equipment and Peralta Signs, as well as a fitness center, child day care center, cabinet manufacturer, tire company, pharmacy, automobile repair shop, beauty salon, used car dealer and antiques store. In addition, petitioner points out that the weekly county newspaper, the County News-Bulletin, serves Valencia County residents and Peralta listings appear in the Belen telephone book. Thus, while services such as the local newspaper, secondary schools, sheriff and local governance, are provided by either Valencia County or Los Lunas, the county seat, no services are provided by Albuquerque or its county, Bernalillo. Therefore, it contends that while "the communities within Valencia County, including Peralta, may be moderately interdependent, this relationship does not extend to Albuquerque." Finally, petitioner states that the Commission has granted a first local service preference in similar circumstances, citing Lockport and Amherst, New York, 13 FCC Rcd 12304 (1997), recon. denied, 64 FR 55434, October 13, 1999 (granting preference where suburban community located within Urbanized Area only 7 miles from city center but was listed in the U.S. Census, had local schools, police department, library, Chamber of Commerce, businesses, churches, post office and zip code).

5. UNM opposes the reallocation of Channel 288C1 to Peralta, arguing that the public interest would be better served if the petitioner were to proceed toward the construction of Station KQLV at its presently authorized site. It states that the channel was originally allotted in 1987 to provide a wide area FM coverage service to the "widely scattered rural population, including several American Indian reservations, in the Grants area." Grants, New Mexico, 2 FCC Rcd 5240 (1987). More than a decade later, UNM points out, that service still has not been instituted even though there was a settlement reached among the six applicants, with part of the public interest rationale being "speeding the institution of new radio broadcast service" to Grants.² UNM recognizes that the retention of Channel 288C at Grants would trigger the fourth allotment priority, other public interest matters, while the reallocation at Peralta would trigger the third priority, first local aural service. However, it argues that in Change of Community MO&O, 5 FCC Rcd at 7096 (199), the Commission recognized that the inflexible application of a first local service could always result in the removal of a channel from a more remote location to that of a suburb of a much larger metropolitan area. This, it submits, is what the petitioner is seeking to do. Grants is the larger and more rural of the two communities, with a population of 8,626 people, and has less

² UNM also points out that the Commission has previously denied a request to reallocate Channel 288C from Grants to a community a few miles south of Peralta, Belen, NM. Belen and Grants, New Mexico, 7 FCC Rcd 4655 (1992).

reception services. Peralta, with a population less than half that of Grants, and only 8% that of Albuquerque, has no local aural service, but receives a multitude of radio and television service from adjacent Albuquerque and other communities within the metropolitan area. UNM states that Peralta is not unlike the communities of Richmond, CA, and Sandy Springs, GA, where the Commission denied a first local service preference based in part on their close proximity and much smaller sizes relative to the larger central city of an urbanized area. See, RKO General, Inc. (KFRC), 5 FCC Rcd 3222 at para. 12 (1990), and Eaton, 6 FCC Rcd 6580 at paras. 24, 25 (1991).

6. UNM points out that Peralta does not have municipal services, its own school system, a hospital, its own local government or elected officials. Rather, Peralta is governed as part of Valencia County. In addition, it states that over half of the county's workforce travels outside the county for employment, according to the U.S. Census, even though there are businesses in Peralta, some of which incorporate the name in their businesses name. Peralta also does not have its own local paper, its own separate section in a telephone book, or its own public transportation system. UNM states that it is also concerned with the delay in instituting radio service at Grants. Although the channel was allotted over a decade ago, no station is yet on the air. Further, the petitioner states that it is willing to pursue construction at its authorized site and UNM believes that service will be even further delayed if Channel 288 is removed from Grants and Channel 244C3 is substituted for it because the entire application process through the Commission will have to begin again and, if a transmitter site is chosen on Forest Service land, through the U.S. Forest Service as well. Additionally, UNM says it is concerned about the impact on noncommercial educational radio service in the Albuquerque area, pointing out that the petitioner styles KQLV as a "noncommercial" station and that it is simultaneously prosecuting an application for a new full service noncommercial FM Station on Channel 213 at Peralta (BPED-19961024MD) as well as two noncommercial FM translator station application that would also serve the Albuquerque area (BPFT-970902TJ, Sandia, NM and BPFT-970902TH, Placitas, NM). UNM states that it has a pending application to upgrade its Station KUNM at Albuquerque which conflicts with petitioner's Peralta Channel 213 application.

7. Petitioner, in reply comments, disputes that the public interest would be better served by requiring it to pursue the construction of Station KQLV at Grants. It states that it has been told the process of redesignating its authorized construction site on Mount Taylor in the Cibola National Forest from low to high power usage would likely take a minimum of two years. Further, it has learned that a successful redesignation of the site is not guaranteed since Mount Taylor is a sacred site to four area Native American Tribes, whose objections, if any, to the redesignation would be taken into account. Petitioner states that it was also unable to locate an alternate site that would allow it to serve Grants with the same allotment. Thus, it argues that the only manner in which Station KQLV can promptly provide service is if the channel is reallocated to Peralta and its construction permit modified accordingly. It contends that the alternate channel proposed for Grants, Channel 244C3, does not raise the same transmitter site problems since it does not require a tower height of at least 300 meters above average terrain, thus making it possible to use a site that is not on Forest Service land. In fact, it states that it has located such a site, at coordinates 35-16-45 N; 107-58-01 W, and confirmed its availability. While it recognizes that the site is short-spaced to Station KDAG(FM), Farmington, NM, it says that use of the site is feasible through the use of Section 73.215 of the Commission's Rules. Petitioner disputes that Peralta does not warrant a first local service preference, reiterating that it is not interdependent with Albuquerque.

8. Based on the record before us, we find that Peralta is not a community for allotment purposes.

The Commission's long-standing policy is to require allotments be made to communities composed of "geographically identifiable population groupings." This requirement is generally satisfied if the proposed communities is either incorporated or listed in the U.S. Census. In this case, Peralta is not incorporated but is listed in the U.S. Census as a "Census Designated Place" ("CDP"). The designation of an area as a CDP raises the presumption that an area is a community for allotment purposes. However, that presumption is rebuttable. See Stock Island, Florida, 8 FCC Rcd 343 (1993); East Hemet, California, et al., 4 FCC Rcd 7895 (1989); Hannahs Mill and Milledgeville, Georgia, 7 FCC Rcd 3944 (1992). Petitioner has stated that Peralta has its own post office, zip code, volunteer fire department, school and church as well as a number of businesses, some of which incorporate Peralta in their name. However, based on information presented in comments by UNM and our independent research, we find that Peralta, which does have a separate zip code, has no post office, its mail being delivered by the Bosque Farms post office. The Peralta Elementary School, which handles grades K-4, is part of the Los Lunas School System and its mailing address is that of Los Lunas. The Namaste Child & Family Development Center, which petitioner states is the local Peralta hospital, has both a Peralta and Los Lunas address.³ We recognize that there are some businesses which have a Peralta address and which include Peralta in their business name, as well as a church. However, according to the 1990 U.S. Census, of the people 16 years and older who live within the Peralta zip code, only 91 people work in their place of residence while 1,294 work outside of the residence. Of these, 794 people work in the central city of a Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA), 86 work in the remainder of the MSA/PMSA and 320 work outside the MSA/PMSA.⁴ Peralta has no local government or elected officials, offers no municipal services, has no local media, and no civic or social organizations. It has no separate listing for Peralta residents or businesses in the telephone book but rather are incorporated within the directory for Belen. Therefore, we find that Peralta is not a community for allotment purposes and thus will not allot Channel 288C1 there.

9. Accordingly, IT IS ORDERED, That the petition for rule making filed by Educational Media Foundation (RM-9342) to substitute Channel 288C1 for Channel 288C at Grants, New Mexico, reallocate Channel 288C1 from Grants to Peralta, New Mexico, and modify the construction permit of Station KQLV accordingly, IS DENIED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

³ See Yahoo Yellow Pages and uswestdex.com.

⁴ See, www.census.gov/cdrom/lookup/941819471, 1990 US Census Data, Database: C90STF3B.